IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11506 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHMAD FARUQ ABUBHAI MEMON

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/01/2002

ORAL JUDGEMENT

The petitioner, by this petition under Article 226 of the Constitution of India, challenges the order passed by the Commissioner of Police, Surat City, Surat on 30.07.2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA Act" for short) on the ground stated in the

petition.

2. The grounds of detention indicate that the petitioner has been branded as a 'dangerous person'. The detaining authority took into consideration four offences registered against the petitioner - detenu, so also the statements of two anonymous witnesses indicating his activities. The authority also observed that the activities of the detenu are detrimental to public order and resorting to less drastic remedies under ordinary law may not be effective and, therefore, the order of detention is only the effective remedy and accordingly the order of detention was passed.

3. Mr.Prajapati, learned advocate appearing for the petitioner - detenu has restricted his arguments to the factum of delay in considering and communicating the representation made on behalf of the petitioner detenu. He submitted that a representation was addressed on 03.12.2001 which was rejected on 10.12.2001 and was communicated to the petitioner - detenu on 24.12.2001 by a communication dated 13.12.2001. He places on record the communication received by the petitioner - detenu. Mr.Prajapati places on record the decision of the Apex Court in the case of HARESH PAHWA VS. STATE OF U.P. AND OTHERS reported in AIR 1981 SC 1126 and prayed for accepting this petition and quashing and setting aside the order impugned herein.

4. The petition is opposed to by Mr.Patel, learned A.G.P.

5. The petition can be allowed on the sole ground urged on behalf of the petitioner - detenu. The undisputed facts are that the representation was made on behalf of the detenu on 03.12.2001 which was rejected on 10.12.2001 and communication was addressed to the detenu on 13.12.2001. It is also indicated that the communication was served on the detenu on 24.12.2001. The decision of the representation was taken on 10.12.2001 and was sought to be communicated on 13.12.2001. However, the same was served on the detenu on 24.12.2001 i.e. after 12 days. In the case of Haresh Pahwa Vs. State of U.P. and others (supra) the rejection of the representation was communicated only two days later and it was considered to be an infringement of right of the detenu of making an effective representation. It was held that delay in considering representation would invalidate the detention. In the instant case, there is delay of about 14 days in communicating the decision. Therefore, the continued

detention of the detenu would be vitiated and he, therefore, deserves to be released from detention. The petition, therefore, deserves to be allowed on this ground.

6. In the result, the petition is allowed. The impugned order of detention passed by the Commissioner of Police, Surat City, Surat on 30.07.2001, detaining the petitioner - detenu is hereby quashed and set aside. The detenu-Mohmad Faruq Abubhai Memon be released from detention forthwith, if not required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(A.L. Dave, J)
'Bhavesh'